

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

RUSSELL ZINTER; ET AL.

Plaintiffs,

v.

CHIEF JOSEPH SALVAGGIO; ET AL.

Defendants.

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CIVIL NO. SA-18-CA-680-JKP

**DEFENDANT CITY’S RESPONSE TO PLAINTIFFS’ MOTION
TO COMPEL APPEARANCE AND TESTIMONY OF
DEFENDANT LEON VALLEY AT DEPOSITION AND FOR SANCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, CITY OF LEON VALLEY, (“Defendant” and/or “City”) files this its Response to Plaintiffs’ Motion to Compel Appearance and Testimony of Defendant Leon Valley at Deposition and for Sanctions (“Response”) and in support of this Response, Defendant shows the Court as follows:

1. Plaintiffs filed their Motion to Compel Appearance and Testimony of Defendant Leon Valley at Deposition (“Motion to Compel Appearance”) on January 24, 2022, prior to Defendants’ January 25th response to Plaintiffs’ attempt to confer on January 20th.
2. Plaintiffs responded with an amicable letter on January 26th after Defendant explained its current position resulting from the Court’s denial of Plaintiffs’ Motion for Continuance and the consequential non-extension of the dispositive motion deadline. The non-extension of the dispositive motion deadline will prejudice Defendant by allowing Plaintiffs the opportunity to develop controverting facts during the time Defendant is developing its Motion for Summary

Judgment which includes the deposition of the City's representative and possibly other depositions Plaintiffs may deem essential.

3. Defendant indicated that it and the Individual Defendants did not oppose Plaintiffs' January 4, 2022, Motion for a 120-day continuance for the current trial setting and an amendment of the scheduling order extending all pre-trial deadlines in this case [Dkt. 132]. Defendant also represented that its position had not changed after Plaintiffs filed their Motion for Reconsideration [Dkt. 138] that further depositions can be scheduled if the other deadlines, including the dispositive motion deadlines, are also extended. As such, Defendant has not filed any Response in opposition to Plaintiffs' Motion for Reconsideration of their Motion for Continuance.

4. Defendant expressed further prejudice by placing itself in the precarious position of filing a motion to extend the dispositive motion deadline, if the deposition of the City's representative and other further discovery is allowed, despite this Court's admonishments that further extension requests would be disfavored. [Dkt. 7, pp. 6-7].

5. Pursuant to the arguments cited above, and its legitimate concerns, Defendant and its counsel contend that they are not impeding, delaying, frustrating the examination of the City's representative, or unjustifiably resisting discovery in this case and therefore, not subject to sanctions under FRCP 37. Defendant responded to Plaintiffs' January 26th letter on January 27th proposing a conference among all counsel regarding discovery matters to discuss possible solutions to the restrictions caused by the expiration of the discovery deadline. Said conference is pending.

6. Please note that the arguments set forth in this Response are not a waiver to the legal positions expressed in Defendant's Motions, Responses and Replies to other pre-trial matters in instant case currently pending before this Court.

CONCLUSION/PRAAYER

7. Within the parameters set by this Court, Defendant has no objection in pursuing efforts work an amicable solution to resolve the issues set forth in Plaintiffs' Motion to Compel Appearance and Testimony of Defendant Leon Valley at Deposition, taking into consideration Defendant's asserted prejudicial effect in the non-extension of the dispositive motion deadline.

SIGNED this 27th day of January 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon the below named individual(s) via certified mail, return receipt requested, unless otherwise indicated, and according to the Federal Rules of Civil Procedure on the 27th day of January, 2022.

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